

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

3. Lenny Burke Farm is a residential care facility for victims of traumatic brain injury. The petitioner was

originally hired as an aide at that facility in June 1999, but in April 2000 she was transferred to work in a related facility under the same organizational "umbrella" as Lenny Burke Farm that is located a few miles away. From the time she was transferred the petitioner had no reason to be present at Lenny Burke Farm.

4. Two employees of Lenny Burke Farm testified that around noon on July 31, 2000 they were working with patients downstairs at the facility when the petitioner, whom they knew, came into the facility. Both employees testified that they found this puzzling because the petitioner did not work there and had no reason to be there. The petitioner followed one of the employees upstairs to a room in which medications were kept. The room also contained an unlocked box in which varying amounts of cash were kept on account for the personal needs of each patient. The box was kept on a shelf behind a desk.

5. When the employee went back downstairs to deliver the medications to the patients the petitioner stayed behind in the room. After a few minutes the employee who had left the petitioner in the room became suspicious and asked the other employee to go upstairs to check on her. The second employee then went upstairs and saw the petitioner standing over the

desk with the cash box, which at that time was closed, putting "a bunch of bills" in her pocket. The petitioner told her she was there to drop off mileage forms. The petitioner then left the facility.

6. Both employees testified that the cash box was not out on the desk when they left the upstairs room prior to the petitioner's arrival. They also stated that nobody else was in the room at the time.

7. When the petitioner had gone the two employees asked the assistant manager to check the cash box. The assistant manager testified that he had balanced the patients' accounts the previous night and could immediately see that the contents of the cash box had been tampered with. He found that \$136 was missing from the envelope of one of the patients and that there were no notes in the box about anyone having taken this amount out of the box. The assistant manager immediately reported the incident to the manager of that facility.

8. The manager immediately spoke with the two workers who had reported the incident and then called the petitioner to ask her to come to the office the next morning. That night the petitioner spoke by phone with the employee who had found her in the upstairs room and learned the nature of the meeting the next day.

9. On August 1, 2000 the manager met with the petitioner, the two employees who witnessed the incident, and the co-directors of the facility. The manager testified that when she confronted the petitioner with the allegations the petitioner gave a "quiet denial" and handed the manager a handwritten note dated August 31, 2000 that she had taken \$20 to buy a watch for the patient from whose account the money was missing. The manager thought this was strange because the petitioner did not work at all with that patient, and would have had no reason to buy him a watch without speaking first with one of his direct caregivers. The manager discharged the petitioner and reported the incident to DAD.

10. The petitioner has never returned any of the money taken on August 31, 2000, not even the \$20 she says she took to buy the patient a watch. Nor did she ever buy the patient the watch.

11. The petitioner testified at the hearing that she had taken her own money out of her pocket that day and was putting it back in when the employee found her. Even though she had previously admitted taking \$20 out to buy the patient a watch, she testified that the cash box was locked that day. She again stated that she was at the facility to pick up mileage forms. Several other witnesses testified, however, that

mileage forms were readily available at the facility where the petitioner was actually working.

12. At the hearing most of the witnesses against the petitioner appeared under subpoena. Without exception, their demeanor was straightforward and without any enmity toward the petitioner. Moreover, their testimony was consistent. Therefore, it is deemed to be highly credible.

13. The petitioner's responses throughout the investigation as reported by witnesses and observed by the hearing officer at the hearing were vague and inconsistent. Her denials that she took the money are wholly unconvincing.

14. It is found that the petitioner took money from the cash account of a disabled individual without permission or authorization and converted it to her own use and benefit.

ORDER

The Decision by the Department substantiating the report as one of exploitation against a disabled person by the petitioner is affirmed.

REASONS

The Commissioner of the Department of Aging and Disabilities is required by statute to investigate reports

regarding the abuse and exploitation of elderly and disabled persons and to keep those reports that are "substantiated" in a "registry" under the name of the person who committed the abuse. 33 V.S.A. §§ 6906 and 6911. Within 30 days of notification that a report of abuse has been substantiated against them, individuals can apply to the Human Services Board for a fair hearing on the ground that the report is unsubstantiated. Id. § 6906(d). Reports that are found to be unsubstantiated must be destroyed pursuant to 33 V.S.A. § 6906(e) and not entered in the Department's registry.

The statute which protects elderly and disabled adults, 33 V.S.A. § 6902, includes the following in the definition of "exploitation":

As used in this chapter:

. . .

(7) "Exploitation" means:

(A) Wilfully using, withholding, or disposing of funds or property of an elderly or disabled adult without legal authority for the wrongful profit or advantage of another;

. . .

Based on the above findings, it must be concluded that the petitioner's conduct in this case clearly meets the above

definition. The Department's decision in this matter is, therefore, affirmed.

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